

Assembly Bill No. 488

CHAPTER 393

An act to amend Sections 3025.7, 3076, 3145.5, 3146, 3147, 3147.5, 3147.6, 3147.7, 3148, 3150, 3152, and 3152.5 of, to amend and renumber Sections 3090.1, 3096, 3096.5, 3096.6, 3096.7, 3097, 3099, 3100, 3103, 3124, 3125, 3128, 3129, 3130, 3131, and 3135 of, to add Sections 3091, 3092, and 3110 to, to repeal Sections 3094, 3095, 3101, 3102, 3104, 3105, 3105.1, 3106, 3107, 3107.1, 3108, 3109, 3123, 3126, 3127, and 3153 of, and to repeal and add Section 3090 of, the Business and Professions Code, relating to optometry.

[Approved by Governor September 29, 2005. Filed with
Secretary of State September 29, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 488, Bermudez. Optometry.

Existing law, the Optometry Practice Act, licenses and regulates the practice of optometry by the State Board of Optometry, and makes a violation of the act a crime. Existing law requires licensed optometrists who fit or supply a patient with lenses to provide the patient with a receipt.

This bill would instead require optometrists to provide a receipt to patients making a specified payment to the practice and it would also revise the information that is required on the receipt. The bill would authorize the board to issue a probationary license to an applicant, subject to specified terms and conditions.

Existing law sets forth acts that constitute unprofessional conduct and acts that are unlawful, and authorizes the board to take specified action against licensees.

This bill would revise and recast provisions relating to unprofessional conduct. The bill would authorize the Attorney General to prosecute a licensee for unprofessional conduct under the Administrative Procedure Act.

Existing law authorizes the board to establish various fees and penalties related to the practice of optometry. Existing law requires the board to submit a report to certain committees of the Legislature whenever the board increases a fee.

This bill would delete the reporting requirement. The bill would also make various changes to those fees.

The bill would make related changes.

The people of the State of California do enact as follows:

SECTION 1. Section 3025.7 of the Business and Professions Code is amended to read:

3025.7. Except as provided in Sections 3102 and 3103, nothing contained in Section 651.3 shall be construed as authorizing the board to adopt, amend, or repeal rules and regulations relating to price fixing or advertising of commodities.

SEC. 2. Section 3076 of the Business and Professions Code is amended to read:

3076. A licensed optometrist shall deliver to each patient that makes a payment to the practice, excluding insurance copayments and deductibles, a receipt that contains all of the following information:

- (a) His or her name.
- (b) The number of his or her optometrist license.
- (c) His or her place of practice.
- (d) A description of the goods and services for which the patient is charged and the amount charged.

SEC. 3. Section 3090 of the Business and Professions Code is repealed.

SEC. 4. Section 3090 is added to the Business and Professions Code, to read:

3090. Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenseholders, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board.

SEC. 5. Section 3090.1 of the Business and Professions Code is amended and renumbered to read:

3096. (a) A licensee may be ordered to undergo a professional competency examination if, after investigation and review by the Board of Optometry, there is reasonable cause to believe that the licensee is unable to practice optometry with reasonable skill and safety to patients. Reasonable cause shall be demonstrated by one or more of the following:

- (1) A single incident of gross negligence.
- (2) A pattern of inappropriate prescribing.
- (3) An act of incompetence or negligence causing death or serious bodily injury.
- (4) A pattern of substandard care.

(b) The results of a competency examination shall be admissible as direct evidence and may be considered relevant in any subsequent disciplinary or interim proceeding against the licensee taking the examination, and, assuming those results are determined to be relevant,

shall be considered together with other relevant evidence in making a final determination.

SEC. 6. Section 3091 is added to the Business and Professions Code, to read:

3091. (a) The board may deny an optometrist license to any applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her license; or, the board in its sole discretion, may issue a probationary license to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:

(1) Practice limited to a supervised, structured environment in which the licensee's activities shall be supervised by another optometrist licensed by the board.

(2) Total or partial restrictions on drug prescribing privileges for controlled substances.

(3) Continuing medical or psychiatric treatment.

(4) Ongoing participation in a specified rehabilitation program.

(5) Enrollment and successful completion of a clinical training program.

(6) Abstention from the use of alcohol or drugs.

(7) Restrictions against engaging in certain types of optometry practice.

(8) Compliance with all provisions of this chapter.

(9) Any other terms and conditions deemed appropriate by the board.

(b) The board may modify or terminate the terms and conditions imposed on the probationary license if the licensee petitions for modification or termination of terms and conditions of probation. A licensee shall not petition for modification or termination of terms and conditions until one year has passed from the effective date of the decision granting the probationary license.

SEC. 7. Section 3092 is added to the Business and Professions Code, to read:

3092. All proceedings against a licensee for any violation of this chapter or any of the regulations adopted by the board, or against an applicant for licensure for unprofessional conduct or cause, shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) except as provided in this chapter, and shall be prosecuted by the Attorney General's office.

SEC. 8. Section 3094 of the Business and Professions Code is repealed.

SEC. 9. Section 3095 of the Business and Professions Code is repealed.

SEC. 10. Section 3096 of the Business and Professions Code is amended and renumbered to read:

3097. The sending of a solicitor from house to house or the soliciting from house to house by the holder of an optometrist license constitutes a cause to revoke or suspend his or her license.

SEC. 11. Section 3096.5 of the Business and Professions Code is amended and renumbered to read:

3099. No optometrist shall advertise or otherwise hold himself or herself out to be a specialist in eye disease and the treatment thereof.

SEC. 12. Section 3096.6 of the Business and Professions Code is amended and renumbered to read:

3106. Knowingly making or signing any certificate or other document directly or indirectly related to the practice of optometry that falsely represents the existence or nonexistence of a state of facts constitutes unprofessional conduct.

SEC. 13. Section 3096.7 of the Business and Professions Code is amended and renumbered to read:

3105. Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct. In addition to any other disciplinary action, the State Board of Optometry may impose a civil penalty of five hundred dollars (\$500) for a violation of this section.

SEC. 14. Section 3097 of the Business and Professions Code is amended and renumbered to read:

3108. When the holder is suffering from a contagious or infectious disease, it constitutes a cause to suspend his or her license during the period of continuance of that disease.

SEC. 15. Section 3099 of the Business and Professions Code is amended and renumbered to read:

3100. The holding out as having a special knowledge of optometry, as defined in this chapter, by the holder of a license, constitutes a cause to revoke or suspend his or her license.

SEC. 16. Section 3100 of the Business and Professions Code is amended and renumbered to read:

3104. The employing of what are known as “cappers” or “steerers” to obtain business constitutes unprofessional conduct.

SEC. 17. Section 3101 of the Business and Professions Code is repealed.

SEC. 18. Section 3102 of the Business and Professions Code is repealed.

SEC. 19. Section 3103 of the Business and Professions Code is amended and renumbered to read:

3109. Directly or indirectly accepting employment to practice optometry from any person not having a valid, unrevoked license as an optometrist or from any company or corporation constitutes unprofessional conduct. Except as provided in this chapter, no optometrist may, singly or jointly with others, be incorporated or become incorporated when the purpose or a purpose of the corporation is to practice optometry or to conduct the practice of optometry.

The terms “accepting employment to practice optometry” as used in this section shall not be construed so as to prevent a licensed optometrist from practicing optometry upon an individual patient.

Notwithstanding the provisions of this section or the provisions of any other law, a licensed optometrist may be employed to practice optometry by a physician and surgeon who holds a certificate under this division and who practices in the specialty of ophthalmology or by a health care service plan pursuant to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

SEC. 20. Section 3104 of the Business and Professions Code is repealed.

SEC. 21. Section 3105 of the Business and Professions Code is repealed.

SEC. 22. Section 3105.1 of the Business and Professions Code is repealed.

SEC. 23. Section 3106 of the Business and Professions Code is repealed.

SEC. 24. Section 3107 of the Business and Professions Code is repealed.

SEC. 25. Section 3107.1 of the Business and Professions Code is repealed.

SEC. 26. Section 3108 of the Business and Professions Code is repealed.

SEC. 27. Section 3109 of the Business and Professions Code is repealed.

SEC. 28. Section 3110 is added to the Business and Professions Code, to read:

3110. The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.

(d) Incompetence.

(e) The commission of fraud, misrepresentation, or any act involving dishonesty or corruption, that is substantially related to the qualifications, functions, or duties of an optometrist.

(f) Any action or conduct that would have warranted the denial of a license.

(g) The use of advertising relating to optometry that violates Section 651 or 17500.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license by another state or territory of the United States, by any other governmental agency,

or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(i) Procuring his or her license by fraud, misrepresentation, or mistake.

(j) Making or giving any false statement or information in connection with the application for issuance of a license.

(k) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of an optometrist, in which event the record of the conviction shall be conclusive evidence thereof.

(l) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person applying for a license or holding a license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a license to conduct with safety to the public the practice authorized by the license, or the conviction of a misdemeanor or felony involving the use, consumption, or self administration of any of the substances referred to in this subdivision, or any combination thereof.

(m) Committing or soliciting an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of an optometrist.

(n) Repeated acts of excessive prescribing, furnishing or administering of controlled substances or dangerous drugs specified in Section 4022, or repeated acts of excessive treatment.

(o) Repeated acts of excessive use of diagnostic or therapeutic procedures, or repeated acts of excessive use of diagnostic or treatment facilities.

(p) The prescribing, furnishing, or administering of controlled substances or drugs specified in Section 4022, or treatment without a good faith prior examination of the patient and optometric reason.

(q) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients.

(r) Performing, or holding oneself out as being able to perform, or offering to perform, any professional services beyond the scope of the license authorized by this chapter.

(s) The practice of optometry without a valid, unrevoked, unexpired license.

(t) The employing, directly or indirectly, of any suspended or unlicensed optometrist to perform any work for which an optometry license is required.

(u) Permitting another person to use the licensee's optometry license for any purpose.

(v) Altering with fraudulent intent a license issued by the board, or using a fraudulently altered license, permit certification or any registration issued by the board.

(w) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood borne infectious diseases from optometrist to patient, from patient to patient, or from patient to optometrist. In administering this subdivision, the board shall consider the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood borne pathogens in health care settings. As necessary, the board may consult with the Medical Board of California, the Board of Podiatric Medicine, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

(x) Failure or refusal to comply with a request for the clinical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, unless the licensee is unable to provide the documents within this time period for good cause.

(y) Failure to refer a patient to an appropriate physician in either of the following circumstances:

(1) Where an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician.

(2) As required by subdivision (c) of Section 3041.

SEC. 29. Section 3123 of the Business and Professions Code is repealed.

SEC. 30. Section 3124 of the Business and Professions Code is amended and renumbered to read:

3107. It is unlawful to use or attempt to use any license issued by the board that has been purchased, fraudulently issued, counterfeited, or issued by mistake, as a valid license.

SEC. 31. Section 3125 of the Business and Professions Code is amended and renumbered to read:

3078. It is unlawful to practice optometry under a false or assumed name, or to use a false or assumed name in connection with the practice of optometry, or to make use of any false or assumed name in connection with the name of a person licensed pursuant to this chapter. However, the board may issue written permits authorizing an individual optometrist or an optometric group or optometric corporation to use a name specified in the permit in connection with its practice if, and only if, the board finds to its satisfaction that:

(a) The place or establishment, or the portion thereof, in which the applicant or applicants practice, is owned or leased by the applicant or applicants, and the practice conducted at that place or establishment, or portion thereof, is wholly owned and entirely controlled by the applicant

or applicants; provided, however, that where the applicant or applicants are practicing optometry in a community clinic, as defined in subdivision (a) of Section 1204 of the Health and Safety Code, this subdivision shall not apply.

(b) The name under which the applicant or applicants propose to operate is in the judgment of the board not deceptive or inimical to enabling a rational choice for the consumer public and contains at least one of the following designations: “optometry” or “optometric”; provided, however, that where the applicant or applicants are practicing optometry in a community clinic, as defined in subdivision (a) of Section 1204 of the Health and Safety Code, this subdivision shall not apply. In no case shall the name under which the applicant or applicants propose to operate contain the name or names of any of the optometrists practicing in the community clinic.

(c) The names of all optometrists practicing at the location designated in the application are displayed in a conspicuous place for the public to see, not only at the location, but also in any advertising permitted by law.

(d) No charges which could result in revocation or suspension of an optometrist’s license to practice optometry are pending against any optometrist practicing at the location.

Permits issued under this section by the board shall expire and become invalid unless renewed at the times and in the manner provided in Article 7 (commencing with Section 3145) for the renewal of licenses issued under this chapter. The board may charge an annual fee, not to exceed ten dollars (\$10) for the issuance or renewal of each permit.

Any permit issued under this section may be revoked or suspended at any time that the board finds that any one of the requirements for original issuance of a permit, other than under subdivision (d), is no longer being fulfilled by the individual optometrist, optometric corporation, or optometric group to whom the permit was issued. Proceedings for revocation or suspension shall be governed by the Administrative Procedure Act.

In the event the board revokes or suspends the licenses to practice optometry of an individual optometrist or any member of a corporation or group to whom a permit has been issued under this section, the revocation or suspension shall also constitute revocation or suspension, as the case may be, of the permit.

SEC. 32. Section 3126 of the Business and Professions Code is repealed.

SEC. 33. Section 3127 of the Business and Professions Code is repealed.

SEC. 34. Section 3128 of the Business and Professions Code is amended and renumbered to read:

3101. It is unlawful to advertise by displaying a sign or otherwise or hold himself or herself out to be an optometrist without having at the time of so doing a valid unrevoked license from the board.

SEC. 35. Section 3129 of the Business and Professions Code is amended and renumbered to read:

3102. It is unlawful to advertise as being free or without cost the examination or treatment of the eyes or the furnishing of optometrical services.

SEC. 36. Section 3130 of the Business and Professions Code is amended and renumbered to read:

3103. It is unlawful to include in any advertisement relating to the sale or disposition of goggles, sunglasses, colored glasses or occupational eye-protective devices, any words or figures that advertise or have a tendency to advertise the practice of optometry.

This section does not prohibit the advertising of the practice of optometry by a registered optometrist in the manner permitted by law.

SEC. 37. Section 3131 of the Business and Professions Code is amended and renumbered to read:

3094. In addition to other proceedings provided for in this chapter, whenever any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, an offense against this chapter, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining that conduct on application of the board, the Attorney General, the district attorney of the county, or on application of 10 or more persons holding licenses issued under this chapter.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

SEC. 38. Section 3135 of the Business and Professions Code is amended and renumbered to read:

3095. In accordance with Section 125.9, the board may establish a system for the issuance of citations, and the assessment of administrative fines, as deemed appropriate by the board.

SEC. 39. Section 3145.5 of the Business and Professions Code is amended to read:

3145.5. Administrative fines collected pursuant to Section 3095 shall be deposited in the Optometry Fund. It is the legislative intent that moneys collected as fines and deposited in the fund be used by the board primarily for enforcement purposes.

SEC. 40. Section 3146 of the Business and Professions Code is amended to read:

3146. A license issued under this chapter expires at midnight on the last day of the licenseholder's birth month following its original issuance and thereafter at midnight on the last day of the licenseholder's birth month every two years if not renewed. To renew an unexpired license, the licenseholder shall apply for renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter.

SEC. 41. Section 3147 of the Business and Professions Code is amended to read:

3147. Except as otherwise provided by Section 114, an expired license may be renewed at any time within three years after its expiration on filing of an application for renewal on a form prescribed by the board, and payment of all accrued and unpaid renewal fees. If an expired license is renewed, the licenseholder shall pay the delinquency fee prescribed by the board. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the accrued renewal fees are paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue as provided in Section 3146 and 3147.5.

SEC. 42. Section 3147.5 of the Business and Professions Code is amended to read:

3147.5. A license that has been suspended is subject to expiration and shall be renewed as provided in this article, but renewal does not entitle the holder of a suspended license to engage in the practice of optometry, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

A license that has been revoked is subject to expiration, but it may not be renewed. If a revoked license is reinstated after it has expired, a reinstatement fee of 150 percent of the renewal fee shall be assessed.

SEC. 43. Section 3147.6 of the Business and Professions Code is amended to read:

3147.6. Except as otherwise provided by Section 114, a license that is not renewed within three years after its expiration may be restored thereafter, if no fact, circumstance, or condition exists that, if the license were restored, would justify its revocation or suspension, provided all of the following conditions are met:

(a) The holder of the expired license is not subject to denial of a license under Section 480.

(b) The holder of the expired license applies in writing for its restoration on a form prescribed by the board.

(c) He or she pays the fee or fees as would be required of him or her if he or she were then applying for a license for the first time and had not previously taken the examination for a license.

(d) He or she takes and satisfactorily passes the clinical portion of the regular examination of applicants, or other clinical examination approved by the board, and takes and satisfactorily passes the California law and regulations examination.

(e) After having taken and satisfactorily passed the clinical portion of the regular examination of applicants, or other clinical examination approved by the board, he or she pays a restoration fee equal to the renewal fee in effect on the last regular renewal date for licenses.

SEC. 44. Section 3147.7 of the Business and Professions Code is amended to read:

3147.7. The provisions of Section 3147.6 shall not apply to a person holding a license that has not been renewed within three years of expiration, if the person provides satisfactory proof that he or she holds an

active license from another state. In this event, the person may renew his or her license in the manner provided for under Section 3147.

SEC. 45. Section 3148 of the Business and Professions Code is amended to read:

3148. From each fee for the renewal of a license for the biennial renewal of a license, there shall be paid the sum of sixteen dollars (\$16) by the Director of Consumer Affairs to the University of California.

This sum shall be used at and by the University of California solely for the advancement of optometrical research and the maintenance and support of the department at the university in which the science of optometry is taught.

The balance of each renewal fee shall be paid into the Optometry Fund.

SEC. 46. Section 3150 of the Business and Professions Code is amended to read:

3150. The department may make all necessary disbursements to carry out the provisions of this chapter.

SEC. 47. Section 3152 of the Business and Professions Code is amended to read:

3152. The amount of fees and penalties prescribed by this chapter shall be established by the board in amounts not greater than those specified in the following schedule:

(a) The fee for applicants applying for a license shall not exceed two hundred seventy-five dollars (\$275).

(b) The fee for renewal of an optometric license shall not exceed three hundred dollars (\$300).

(c) The annual fee for the renewal of a branch office license shall not exceed seventy-five dollars (\$75).

(d) The fee for a branch office license shall not exceed seventy-five dollars (\$75).

(e) The penalty for failure to pay the annual fee for renewal of a branch office license shall not exceed twenty-five dollars (\$25).

(f) The fee for issuance of a license or upon change of name authorized by law of a person holding a license under this chapter shall not exceed twenty-five dollars (\$25).

(g) The delinquency fee for renewal of an optometric license shall not exceed twenty-five dollars (\$25).

SEC. 48. Section 3152.5 of the Business and Professions Code is amended to read:

3152.5. The board may require each applicant for a certificate to use therapeutic pharmaceutical agents, pursuant to Section 3041.3, to pay an application fee, and may require each licenseholder to pay a renewal fee. The application fee and the renewal fee shall not exceed the actual costs to the board of the reviewing and processing of the application for a license or renewal of a license, monitoring the practice by licenseholders, and enforcing the provisions of law governing the use of therapeutic pharmaceutical agents, the diagnosis and treatment of certain conditions,

and the performance of certain procedures by persons certified to use therapeutic pharmaceutical agents.

SEC. 49. Section 3153 of the Business and Professions Code is repealed.

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